

FORD MacELVAIN

IBLA 80-389

Decided October 7, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring null and void 105 mining claims situated on the outer continental shelf and refusing to record the notices of location submitted for such claims. CA MC 62288.

Affirmed.

1. Mining Claims: Lands Subject to--Outer Continental Shelf Lands Act: Generally

The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. Mining claims situated on the outer continental shelf assertedly located pursuant to the placer provisions of the general mining law, 30 U.S.C. §§ 35-36 (1976), must be declared null and void.

2. Mining Claims: Recordation

It is proper to refuse to accept notices of location of mining claims submitted for recordation pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), when the claims are null and void because they are filed for lands on the outer continental shelf.

APPEARANCES: James D. Bell, Esq., Jackson, Mississippi, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Ford MacElvain has appealed from the January 8, 1980, decision of the California State Office, Bureau of Land Management (BLM), declaring 105 mining claims null and void because they are situated on the outer continental shelf (OCS). The decision indicated that notices of location submitted for recordation pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), were being returned.

The notices of location generally assert the claims were located in 1968 pursuant to the provisions in the general mining law relating to placer claims. 30 U.S.C. §§ 35, 36 (1976). Appellant contends that the lands were then public lands subject to the mining laws, and as such they remain available for appropriation under the general mining law of 1872. He further contends that if they are not available at the present time, it is only by virtue of FLPMA, passed in 1976, a date subsequent to the date of location of the claims. 1/

[1, 2] These arguments are clearly without merit. The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. 43 U.S.C. § 1332(a) (1976); Lowe v. Union Oil Co. of California, 487 F.2d 477 (9th Cir. 1973) cert. denied, 417 U.S. 931 (1974). Claims for mineral deposits on the outer continental shelf cannot be established under the general mining law, and such claims are therefore invalid. Id. Because the claims are clearly invalid, BLM properly refused to accept them for recordation under section 314 of FLPMA, 43 U.S.C. § 1744 (1976). 2/

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1/ Presumably, he means the definition given to "public lands" by section 103(e) of FLPMA, 43 U.S.C. § 1702(e) (1976), which specifically excludes lands on the outer continental shelf.

2/ The BLM decision also noted that the subject lands are not subject to appropriation under the Oil Placer Act, ch. 216, 29 Stat. 526 (1897). This holding was not contested by appellant. Although that statute was never specifically and directly repealed, it has effectually been supplanted by section 37 of the Mineral Leasing Act of 1920, ch. 85, 41 Stat. 437, 451 (1920), which provided that deposits of certain minerals, such as oil, would be subject to disposition only as provided in the Mineral Leasing Act. Thus, no oil placer claims could be located after that Act under the mining laws. The fact that Congress made separate provision for OCS mineral leasing in the Outer Continental Shelf Lands Act makes clear that legislation regarding onshore minerals was not considered to extend to Federally owned offshore mineral deposits.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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James L. Burski  
Administrative Judge

